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Compilation on Botswana

Report of the Office of the United Nations High Commissioner for Human Rights

I. Background

1. The present report was prepared pursuant to Human Rights Council resolutions 5/1 and 16/21, taking into consideration the periodicity of the universal periodic review. It is a compilation of information contained in reports of treaty bodies and special procedures and other relevant United Nations documents, presented in a summarized manner owing to word-limit constraints.

II. Scope of international obligations and cooperation with international human rights mechanisms and bodies[1][2]

2. The Special Rapporteur in the field of cultural rights and the Special Rapporteur on the human right to safe drinking water and sanitation encouraged Botswana to ratify the International Covenant on Economic, Social and Cultural Rights.[3]

3. The United Nations Educational, Scientific and Cultural Organization (UNESCO) encouraged Botswana to ratify its Convention against Discrimination in Education.[4]

4. In terms of reporting, UNESCO encouraged Botswana to submit State reports for the periodic consultations on education-related standard-setting instruments.[5]

5. The Special Rapporteur on cultural rights encouraged Botswana to enhance its cooperation with the United Nations human rights mechanisms. She noted that many of the country's reports to treaty bodies were seriously overdue and that Botswana had not extended a standing invitation to the special procedures.[6]

6. In a letter to the United Nations in 2011, Botswana reaffirmed its strong support for the work of the United Nations human rights system[7] and, inter alia, pledged to cooperate fully with treaty bodies, including through meeting its reporting obligations.[8] Botswana also expressed its full support for the special procedures mechanism.[9]

III. National human rights framework[6]

7. UNESCO stated that the Constitution of Botswana did not guarantee the right to education.[7] It recommended that Botswana enshrine the right to education in its Constitution.[8]

8. The Committee on the Elimination of Discrimination against Women recommended that Botswana provide, in its next periodic report, additional information on actions taken to repeal section 15 (4) of the Constitution, in order to end violations of women's rights with respect to adoption, marriage, divorce, burial and devolution of property on death and other matters of personal law.[9]

9. The Special Rapporteur on cultural rights welcomed the ongoing efforts towards the establishment of a national human rights institution and stated that all efforts should be made to ensure compliance with the principles relating to the status of national institutions for the promotion and protection of human rights (Paris Principles) as well as ownership of the institution by the people through, in particular, wide consultations as well as the effective and informed participation of non-governmental organizations in the discussions on the final design and establishment of the institution.[10]

10. In 2011, Botswana expressed its commitment to the creation of a national human rights institution in line with the Paris Principles.[11]

IV. Implementation of international human rights obligations, taking into account applicable international humanitarian law

A. Cross-cutting issues

1. Equality and non-discrimination[12]

11. The Special Rapporteur on cultural rights called for the review of section 15 of the Constitution of Botswana, 1996 (as amended up to 2006), in particular, sub-sections 4 (c) and (d) and 9 (a), in order to eliminate exceptions to the principle of non-discrimination that were not in compliance with international human rights treaties.[13]

2. Development, the environment and business and human rights

12. The Special Rapporteur on cultural rights stated that Botswana must be commended for its efforts and achievements in the areas of development and poverty reduction. She stated that important policies geared towards nation-building had been implemented and efforts to recognize, value and take benefit from the rich cultural diversity of the country had been developed.[14]

13. While commending Botswana for its approach to conservation and development that recognized the rights of local people to manage and benefit from the management and use of natural resources through community-based natural resource management, the Special Rapporteur encouraged the Government to increase its efforts in that regard, empower the communities concerned and build their capacity, in particular in the tourism industry.[15]

14. While understanding the concerns expressed by the Government regarding the need to protect its rich biodiversity and its policy to ensure the economic transition of local communities through their participation in tourism activities, the Special Rapporteur recommended that the Government fully abide by its obligation to respect and protect cultural rights, particularly the strong cultural dimension of hunting and harvesting, through thorough consultations and discussions with the communities concerned.[16]

B. Civil and political rights

1. Administration of justice, including impunity and the rule of law[13]

15. The Special Rapporteur on cultural rights stated that Botswana strived to maintain a delicate balance between customary law and common law.[14] Botswana had acknowledged that the challenge of reviewing laws and practices that were inconsistent with the full enjoyment of constitutional rights and international standards, and that the dual system comprising customary law and common law must be regularly reviewed to remove contradictions and inconsistencies.[15] All courts could administer customary law, including customary courts developed in connection with the *kgotla* system (traditional community meetings) and operating under the authority of chiefs or headmen. Customary courts dealt with criminal and civil cases of limited extent, with possible appeals to the Customary Court of Appeal and then the High Court. Under the Customary Law Act, 1969, tribal customary law was valid to the extent that it was not incompatible with the provisions of any written law or contrary to morality, humanity or natural justice.[16]

16. The Special Rapporteur was concerned that the adjudication system in which judgment was handed down by a *kgosi* (traditional chief) led to the imposition of the customary law of the dominant tribe in civil matters within a given tribal territory. While welcoming the fact that adjudication by customary courts in criminal matters were to be based on the Penal Code, the Special Rapporteur was concerned that traditional chiefs or the tribal administration were not required to have any particular training in that respect.[17]

2. Fundamental freedoms and the right to participate in public and political life[18]

17. UNESCO stated that defamation was a criminal offence pursuant to sections 192 to 199 of the Penal Code. It recommended that Botswana decriminalize defamation and make provision for such conduct in a civil code.[19]

18. The Special Rapporteur on cultural rights stated that, while constitutional and legislative reforms had provided for greater participation by historically underrepresented groups in the *Ntlo ya Dikgosi* (House of Chiefs) that served as an advisory body to Parliament, the Government should continue working to ensure that those groups were in fact effectively represented in that institution, with due regard to the traditional leadership structures and the practices of all the tribes in Botswana.[20]

C. Economic, social and cultural rights

1. Right to an adequate standard of living[21]

19. The Special Rapporteur on water and sanitation recommended that the Government adopt the Botswana National Water Policy to comprehensively approach water and sanitation issues, guided by the principles and normative content of the human rights to water and sanitation. The policy should include a long-term strategy to manage water resources in a sustainable manner, taking into account a predicted increase in water stress. The Special Rapporteur recommended that the Government, inter alia, adopt measures to improve the treatment of water; introduce a systematic monitoring system for water quality; adopt measures to protect the poor and people living in vulnerable situations from water rationing; and review the tariff system in order to balance sustainability and affordability of water and sanitation services, particularly for the poor.[22]

2. Right to health[23]

20. The Special Rapporteur on water and sanitation recommended that the Government take into consideration that children, pregnant women and people with chronic diseases were particularly vulnerable to illnesses, such as diarrhoea, when there was insufficient water.[24]

3. Right to education[37]

21. UNESCO stated that, despite the education pillar of "Vision 2016", the quality of education was on the decline and the education system remained monolingual. Botswana had since created "Vision 2036", which included education and skills development through the adoption of a national transformation strategy.[38]

22. UNESCO stated that the Education and Training Sector Strategic Plan had been adopted in 2015. The plan contained goals to, inter alia, increase access, equity and quality in early childhood care and education, increase access to quality basic primary education and improve gender equality, especially in tertiary education.[39]

23. UNESCO noted that Botswana was a State party to the Convention concerning the Protection of the World Cultural and Natural Heritage (1972) and the Convention for the Safeguarding of the Intangible Cultural Heritage (2003), and encouraged it to fully implement the relevant provisions that promoted access to and participation in cultural heritage. Botswana should give due consideration to the participation of communities, practitioners, cultural actors and non-governmental organizations from the civil society as well as vulnerable groups (minorities, indigenous peoples, migrants, refugees, young people and persons with disabilities) and ensure that equal opportunities were given to women and girls to address gender disparities.[40]

24. The Special Rapporteur on cultural rights stated that cultural rights, including linguistic rights, should be respected and protected within the education system. Provisions should be made to enable minority groups to learn and to be taught in their mother tongue as well as in the official State languages.[41] The Special Rapporteur called on Botswana to adopt measures in the field of education aimed at encouraging the knowledge of the history, culture and traditions of all the tribes and communities in the country, and to enhance the capacity of teachers to develop extracurricular activities in the language of and according to the culture of minority groups.[42]

D. Rights of specific persons or groups

1. Women[43]

25. The Special Rapporteur on water and sanitation stated that Botswana should increase the participation of women in decision-making on water and sanitation-related matters and take special measures to reduce the disproportionate burden on women caused by the lack of access to water and sanitation.[44]

2. Children[45]

26. The Special Rapporteur on water and sanitation stated that Botswana should improve access to water, sanitation and hygiene in schools and, in particular, install menstrual hygiene management systems in all schools, as well as in health centres.[46]

27. The Office of the United Nations High Commissioner for Refugees (UNHCR) stated that a significant number of rejected asylum seekers detained at the facility referred to as CH (centre for illegal immigrants) were children. It recommended that Botswana, inter alia, release the children and ensure durable solutions that were in their best interests.[47]

3. Minorities and indigenous peoples[48]

28. The Special Rapporteur on cultural rights stated that many people felt excluded from the main society and lacked recognition of their cultural heritage and distinct ways of life. She expressed concern about the strong imbalance in recognition and power between Tswana and non-Tswana communities, a system inherited from the colonial past that greatly influenced the realization of cultural rights in the country. She stated that Botswana needed to engage in a new era of nation-building that fully reflected, built upon and celebrated its rich cultural diversity. From a cultural rights-based perspective, that implied equal recognition and acknowledgement of the country's various communities and the

diverse ways in which people related to their environment and natural resources, as well as their land, and their varied approaches to development.[47]

29. While noting that the *kgotla* system was an important institution for consultation at the local level and had enabled communities to remain the guardians of their cultural heritage, the Special Rapporteur recommended that Botswana enhance the capacity of the *kgotla* system to take on board marginalized groups and people, such as women and minorities, and recognize and respect the cultural patterns and traditional leadership structures of non-Tswana communities.[48] She also recommended that Botswana ensure the implementation of the Bogosi Act, 2008, in a transparent manner and that communities applying for recognition as tribes be kept duly informed of the procedure followed and the steps taken by the Ministry.[49]

30. The Special Rapporteur noted that the Central Kalahari Game Reserve had been established in 1961 to protect the wildlife and to serve as a place of sanctuary for the San people, where they could live their traditional hunter-gatherer way of life. Following the 1997 decision by the Government to relocate the communities outside the reserve, some residents who had been forcefully relocated instituted legal proceedings to enforce their right to live on their land. In 2006, the High Court ruled that their eviction had been unlawful and unconstitutional.[50] The Special Rapporteur recommended that the Government engage with the San people, in particular on community-based natural resource management and tourism in the reserve.[51]

4. Migrants, refugees, asylum seekers and internally displaced persons[52]

31. Referring to recommendations that had been supported by Botswana,[53] UNHCR stated that the reservation by Botswana to article 26 of the 1951 Convention relating to the Status of Refugees concerning freedom of movement, which was enforced through a policy that required all asylum seekers and refugees to reside in Dukwi refugee camp, remained a significant gap in the country's legal framework. Reservations were also made to article 17 of the 1951 Convention thus denying refugees and asylum seekers the right to work. UNHCR recommended that Botswana withdraw the reservations, amend the encampment policy and provide work permits to and decent work opportunities for asylum seekers and refugees.[54]

32. UNHCR stated that, despite its reservation to article 34 of the 1951 Convention, in the past, Botswana had had significant success with the naturalization of refugees. However, recently, refugees had faced difficulties in applying for naturalization. UNHCR recommended that Botswana withdraw the reservation and allow refugees, particularly those with ties to Botswana, to be naturalized.[55]

33. UNHCR stated that the members of the Refugee Advisory Committee that determined refugee status often did not have expertise in refugee law. In addition, the Refugee Act did not establish an appeal mechanism independent of the authority that made the initial decision. The Minister of Justice, Defence and Security had the discretion to review first instance decisions. UNHCR recommended that Botswana, inter alia, provide legal and procedural safeguards for asylum seekers, including during the refugee status determination process.[56]

34. UNHCR stated that Botswana applied a stringent policy regarding the concept of "first country of asylum" and "safe third country" that effected all asylum seekers who transited through another country. UNHCR recommended that Botswana refrain from declaring asylum applications inadmissible on the sole basis of "first country of asylum" or "safe third country".[57]

5. Stateless persons[58]

35. UNHCR stated that, while Botswana was a State party to many universal and regional conventions that recognized the right to nationality, the consequential commitment was not fully reflected in domestic law. There was no legal guarantee for children born in Botswana and who would otherwise be stateless to acquire Botswana nationality, nor was there any law protecting foundlings. UNHCR recommended that Botswana accede to the 1961 Convention on the Reduction of Statelessness and amend section 4 of the Citizenship

Act, 1998, and the Citizenship Regulations, 2004, to grant nationality at birth to any child born in Botswana who would otherwise be stateless and to foundlings."

Notes

[1] Tables containing information on the scope of international obligations and cooperation with international human rights mechanisms and bodies for Botswana are available at www.ohchr.org/EN/Countries/AfricaRegion/Pages/BWIndex.aspx.
[2] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.44-115.45, 115.88, 116.1-116.12, 116.14-116.24, 116.31-116.34 and 117.1.
[3] See A/HRC/31/59/Add.1, para. 80, and A/HRC/33/49/Add.6, para. 6.
[4] See UNESCO submission for the universal periodic review of Botswana, para. 11, and p. 5, recommendation 1.
[5] Ibid., para. 3, and p. 5, recommendation 6.
[6] See A/HRC/31/59/Add.1, para. 4.
[7] See A/65/732, annex, para. 5.
[8] Ibid., paras. 15 and 20.
[9] Ibid., para. 14.
[10] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.1-115.22, 115.38, 115.40, 115.42-115.43, 115.52, 115.54, 115.92, 116.13 and 117.27.
[11] See UNESCO submission, para. 1.
[12] Ibid., p. 5, recommendation 2.
[13] See letter dated 19 March 2013 from the Rapporteur for Follow-up on Concluding Observations of the Committee on the Elimination of Discrimination against Women addressed to the Permanent Representative of Botswana to the United Nations Office and other international organizations in Geneva. Available at http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/BWA/INT_CEDAW_FUL_BWA_13420_E.pdf.
[14] See A/HRC/31/59/Add.1, para. 82.
[15] See A/65/732, annex, para. 17.
[16] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.41, 116.35 and 117.2-117.3.
[17] See A/HRC/31/59/Add.1, para. 81.
[18] Ibid., para. 75.
[19] Ibid., para. 87.
[20] Ibid., para. 88.
[21] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.75-115.76, 115.93, 116.25-116.29 and 117.39.
[22] See A/HRC/31/59/Add.1, para. 17.
[23] Ibid., para. 19.
[24] Ibid., para. 21.
[25] Ibid., para. 24.
[26] For the relevant recommendation, see A/HRC/23/7 and Corr.1, para. 115.78.
[27] See UNESCO submission, paras. 5 and 15.
[28] See A/HRC/31/59/Add.1, paras. 26 and 83.
[29] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.23 and 115.25-115.32.
[30] A/HRC/33/49/Add.6, pp. 5-9, "Recommendations".
[31] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.24, 115.33, 115.35, 115.80-115.82 and 116.39.
[32] See A/HRC/33/49/Add.6, para. 13.
[33] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.36-115.37 and 115.84-115.87.
[34] See UNESCO submission, paras. 13-14.
[35] Ibid., para. 14.
[36] Ibid., para. 17.
[37] See A/HRC/31/59/Add.1, para. 85.
[38] Ibid., para. 86.
[39] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.46-115.51, 115.53, 115.55-115.58, 115.61-115.73 and 117.26.
[40] See A/HRC/33/49/Add.6, p. 8, para. (o).
[41] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.34, 115.39, 115.79, 116.30 and 117.22-117.25.
[42] See A/HRC/33/49/Add.6, p. 8, para. (p).
[43] Office of the United Nations High Commissioner for Refugees (UNHCR) submission for the universal periodic review of Botswana, p. 3.

[44] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.89-115.90, 116.40 and 117.33-117.38.
[45] See A/HRC/31/59/Add.1, para. 76.
[46] Ibid., paras. 22 and 84.
[47] Ibid., para. 84.
[48] Ibid., paras. 66-68.
[49] Ibid., para. 92.
[50] For relevant recommendations, see A/HRC/23/7 and Corr.1, paras. 115.91 and 116.41-116.43.
[51] See A/HRC/23/7 and Corr.1, para. 116.41 (Uganda) and para. 116.42 (Ecuador).
[52] UNHCR submission, pp. 3-4.
[53] Ibid., p. 5.
[54] Ibid., pp. 1-2.
[55] Ibid., p. 2.
[56] For the relevant recommendation, see A/HRC/23/7 and Corr.1, para. 115.77.
[57] UNHCR submission, p. 5.